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FM AMEMBASSY PANAMA
TO RUEHC/SECSTATE WASHDC IMMEDIATE 3360
INFO RUCPDO/DEPT OF COMMERCE WASHDC IMMEDIATE
RHMFIUU/DEPT OF HOMELAND SECURITY WASHINGTON DC IMMEDIATE
RHMFIUU/DEPT OF JUSTICE WASHINGTON DC IMMEDIATE
RUEATRS/DEPT OF TREASURY WASHDC IMMEDIATE
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RHEHAAA/NSC WASHDC IMMEDIATE
RHEHAAA/WHITE HOUSE WASHDC IMMEDIATE

UNCLAS PANAMA 000367

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E.O. 12958: N/A
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SUBJECT: TORRIJOS BRIEFS MARTINELLI AS TIEA THREATENS FTA
PASSAGE

REF: A. PANAMA 326
[B](#). PANAMA 293

SUMMARY

[1](#)1. (SBU) Vice-President Lewis reported to the Ambassador that President Torrijos recommitted to his endgame (reftels) for the U.S.-Panama FTA (FTA) during his first meeting with President-elect Martinelli. That endgame calls for the Obama Administration to submit the FTA to Congress, after which President Torrijos intends to pass labor reforms and immobilize bearer shares. However, if the Obama Administration requires a completed Tax Information Exchange Agreement (TIEA) as a condition for submitting the FTA, Torrijos will be unable to deliver and will instead seek a gracious disengagement to preserve bilateral relations as much as possible. While Torrijos knows completion of a TIEA is impossible in the eight weeks remaining in his administration, he told Martinelli a TIEA as inevitable in the face of OECD pressure. Torrijos was relieved that Martinelli essentially agreed to this game plan, telling Torrijos: "You take care of this. I'm not going to be able to deal with it."

TORRIJOS CAN PASS THE LABOR
AND BEARER SHARES REFORM

[1](#)2. (SBU) In a May 5 six-hour first meeting between President Torrijos and President-elect Martinelli after Martinelli's landslide win, President Torrijos discussed the importance of the FTA and its current political state of play in Panama and United States. President Torrijos informed Martinelli that the labor reforms are nearly negotiated with the USG and he simply needed to decree some new regulations and pass already written legislation. However, the much more difficult legislation to immobilize bearer (anonymous) shares of shell corporations has not been written. Minister of Commerce and Industries Porras is leading a Bearer Shares Commission that is writing the legislation. The Commission contains representatives from the broader business community - including the bankers and attorneys. In an effort to gain support from Martinelli, Torrijos invited Martinelli to appoint a representative to the commission.

A TIEA IS INEVITABLE,

BUT THE FTA IS NOT

¶3. (SBU) Torrijos acknowledged to Martinelli that he does not have sufficient political capital to pass a TIEA during his administration, but he made the case to Martinelli that passage of a TIEA by Panama is inevitable. Torrijos' argument flows as follows: the OECD/G20 will demand a TIEA by March 2010 when Panama's status on the OECD greylist (jurisdictions committed to the internationally agreed tax standard, but have not yet substantially implemented) may downgrade to the blacklist (jurisdictions that have not committed to the internationally agreed tax standard). According to Torrijos, being blacklisted will endanger the economic growth of Panama by discouraging foreign investors. (In 2008, foreign investment totaled \$2.4 billion and exceed 10% of GDP.) Sharply lower levels of investment flows will increase unemployment and poverty, and result in social instability. Thus, Torrijos argued, Panama must pass a TIEA before the G-20 meets again in March.

RECOMMENDATION

¶4. (SBU) How do we move both the FTA and TIEA forward? We strongly recommend a two pronged strategy:

(a) We should make a commitment to negotiate a TIEA appear (and it is) part of a pre-existing obligation, as opposed to a new obligation the USG imposed on the Panamanians after conclusion of ten rounds of negotiations and signing of a

comprehensive FTA. This format, as opposed to an explicit linkage by the USG, enjoys a far greater chance of success. It allows the Panamanians to retain pride and fend off political attacks, while achieving the substantive goals of greater transparency and enhanced revenue collection in the United States. President-elect Martinelli's economic advisor, Frank De Lima, is quoted by Bloomberg as saying in reference to a TIEA, "We are aware that times are changing." However, he also asserts that "we will not succumb to pressure from the United States," and that the FTA and TIEA "should be dealt with separately." Post will engage all leading economic players within the Martinelli team starting this week to send the following message: we can have an FTA and a manageable TIEA commitment, or we can lose the FTA and have a TIEA imposed upon you by the OECD/G20.

(b) We should allow Congress (vice the Administration) to mandate negotiation of a TIEA as a condition of implementation of the Agreement, as opposed to being a condition for passage of the Agreement. The Panamanians are far more comfortable with a Congressional directive, which has a precedent in the unilateral DeConcini Amendment (authorizing the use of force in defense of the Canal) to the 1978 Panama Canal Neutrality Treaty, which achieved U.S. objectives while preserving Panamanian prerogatives. What is more, this course of action allows us to direct the remaining capital of the Torrijos administration toward labor reforms and immobilizing bearer shares, desired USG outcomes that are very unlikely to be forthcoming from a Martinelli administration. We can then concentrate all our firepower with the new Martinelli government on negotiating a TIEA, both to avoid an OECD blacklist and to gain entry into force of the FTA.

STEPHENSON